IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 353 of 2004 (M/B)

Souninder Singh Hooda,
S/o Sri Chaudhri Inder Singh,
R/o Beria Daulat, Bazpur,
District Udham Singh Nagar. ……. Petitioner

Versus

1. State of Uttaranchal,
through Principal Secretary,
Panchayati Raj, Uttaranchal Govt.,
Dehradun.
2. Chief Development Officer,
Zila Panchayat,
Udham Singh Nagar.
3. The Chairman,
Zila Panchayat,
Udham Singh Nagar. ……. Respondents

Mr. Tribhuwan Phartiyal, Advocate for the petitioner.
Mr. J.P. Joshi, Addl. Chief Standing Counsel for respondents Nos. 1 & 2.
Mr. Paresh Tripathi, Advocate for respondent No. 3.

JUDGMENT

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble Prafulla C. Pant, J.

RAJEEV GUPTA, C.J. (Oral)

Mr. Tribhuwan Phartiyal, Advocate for the petitioner.

Mr. J.P. Joshi, Addl. Chief Standing Counsel for respondents Nos. 1 & 2.

Mr. Paresh Tripathi, Advocate for respondent No. 3.

They are heard.

2. Petitioner Souninder Singh Hooda, a member of Zila Panchayat, Udham Singh Nagar, has filed this writ petition for the following reliefs:

"I) Issue, a writ order or direction in the nature of mandamus commanding and directing the respondents

not to permit the husbands or relatives of the ladies members to participate and representing in the Zila Panchayat meeting proceeding.

II) Issue, a suitable writ order or direction in the nature which this Hon'ble Court may deem fit and proper in the circumstances of the case.

III) Award the cost of the petition."

3. The petitioner's case is that in the meetings of Zila Panchayat, Udham Singh Nagar, persons other than the members of the Zila Panchayat are permitted to participate, which is against the express provisions of law. The petitioner, in the writ petition, has specifically averred that one Ishwari Prasad Gangwar, who is husband of Mrs. Sushila Gangwar, Chairman of the Zila Panchayat, participated in the meetings of the Zila Panchayat held on 16.07.2003 and 20.11.2003.

4. Counter affidavit has been filed on behalf of respondents Nos. 1 & 2. For the reasons best known to respondent No. 3 Chairman, Zila Panchayat, Udham Singh Nagar, no counter affidavit has been filed on behalf of this respondent though the petition is pending for the last about two years. However, during the course of hearing, Mr. Paresh Tripathi, the learned counsel for respondent No. 3 adopted the stand taken by respondents Nos. 1 & 2 and the submissions advanced by Mr. J.P. Joshi, the learned Addl. Chief Standing Counsel for respondents Nos. 1 & 2.

5. In the counter affidavit filed on behalf of respondents Nos. 1 & 2, Para 3A reads as follows:

"3. That before giving parawise reply to the writ petition, it is pertinent to bring some relevant facts of the case for deciding the main controversy involved in the instant writ petition, which are as under:-

A. That in the meeting of Zila Panchayat, Udham Singh Nagar, no one member accept elected member of Zila Panchayat including the Kshetra Panchayat, Pramukh and nominee of Minister to participate in the meeting are allowed nor any husband or relatives of any family members of Zila Panchayat are allowed in their personal capacity, the husband of

Chairman of Zila Panchayat is the nominated/authorized member of Hon'ble Health Minister, Sri Tilak Raj Beher and as per rule, the nominee of the Minister can participate in the meeting only and as such, in view of the above stated facts, the writ petition has been filed by the petitioner without any cause of action, hence liable to be dismissed on this ground only."

6. Mr. Tribhuwan Phartiyal, the learned counsel for the petitioner, referring to several provisions under Uttar Pradesh Kshettra Panchayat and Zila Panchayat Adhiniyam, 1961 (hereinafter referred to as 'the Adhiniyam, 1961'), contended that the participation of any person, other than the elected or ex-officio members of the Zila Panchayat, is not permissible in law.

7. Section 18 of the Adhiniyam, 1961, which prescribes the composition of Zila Panchayat, reads as follows:

> **"18. Composition of Zila Panchayat.** - (A) Zila Panchayat shall consist of an Adhyaksha who shall be its Chairperson, and –
>
> (a) Pramukhs of all Kshettra Panchayats in the district;
>
> (b) elected members, who shall be chosen by direct election from the territorial constituencies in the Panchayat area and for this purpose the Panchayat area shall be divided into territorial constituencies in such manner that, so far as practicable, each such territorial constituency shall have a population of fifty thousand;
>
> (c) the members of the House of the People and the members of the Legislative Assembly of the State representing constituencies which comprise any part of the Panchayat area;
>
> (d) the members of the Counsil of States and the members of the State Legislative Council who are registered as electors within the Panchayat area.
>
> (2) The members of the Zila Panchayat mentioned in clauses (a), (c) and (d) of sub-section (1) shall be entitled to take part in the proceedings and vote at the meetings of the Zila Panchayat except in matters of election of, and on a motion of no-confidence against the Adhyaksha or Upadhayaksha.

(3) Each territorial constituency referred to in clause (b) of sub-section (1) shall be represented by one member."

8. Sub-section (2) of Section 18 prescribes that the members of the Zila Panchayat mentioned in clauses (a), (c) and (d) of sub-section (1) shall be entitled to take part in the proceedings and vote at the meetings of the Zila Panchayat except in matters of election of, and on a motion of no-confidence against the Adhyaksha or the Upadhayaksha.

9. The petitioner has placed reliance on the Government Order No. 879/33-1-98-127/98 Panchayati Raj Anubhag-1 dated 10.03.1998 (Annexure No. 1). Paras 2 & 3 of the said Government Order reads as follows:

"2. उक्त के सम्बन्ध में मुझे यह कहने का निदेप्र हुआ है कि कृपया निम्न बिन्दुओं पर अपने अधीनस्थ अधिकारियों को निम्न निर्देप्र प्राथमिकता के आधार पर देने का कष्ट करें–

र्ि क्र महिला निर्वाचित पदाधिकारियों के कार्यालयों में उनके सम्बन्धी कदापि प्रवेप्र नही करेंगे और वह अपने विवके से कार्य करेंगी और यदि अपरिहार्य कारर्णवप्र उन्हे आना भी पड़े तो एक रजिस्टर में उनका नाम तथा आने का कारण अंकित किया जाए।

र्ि क्र रजिस्टर का रख–रखाव एवं आकस्मिक निरीक्षण जिला स्तर पर अपर मुख्य अधिकार जिला पंचायत करेंगे, जिसका आकस्मिक निरीक्षण, मण्डालायुक्त या उनके प्रतिनिधि द्वारा प्रत्येक सप्ताह किया जायेगा।

र्ि क्र क्षेत्र–पंचायत स्तर पर क्षेत्र–पंचायत अधिकारी अथवा जिला–पंचायत राज अधिकारी या उनके प्रतिनिधियों द्वारा प्रत्येक सप्ताह किया जायेगा।

3. उपरोक्त व्यवस्था लागू करने से यह लाभ होगा कि प्रप्रासन में पारदर्प्रिता और अनुप्रासन को बनाये रखने में काफी बल मिलेगा।"

10. Thus, on a combined reading of Section 18 of the Adhiniyam, 1961 and the above-referred Government Order, it becomes apparent that the relatives of the women elected members and office bearers have been prohibited from even entering in their offices so that the women elected members can perform their duties and exercise their powers independently on their own wisdom.

11. Mr. J.P. Joshi, the learned Addl. Chief Standing Counsel, faced with the above situation, referred to the provisions of the Uttar Pradesh District Planning Committee Act, 1999 in general and that of Second Proviso to Sub-section (5) of Section 6 in particular and contended that by virtue of this proviso, a Member of Counsil of Ministers who is ex-officio member of the Zila Panchayat, in the event of his inability to attend the meeting, can nominate a person, who will be entitled to attend the meeting on his behalf.

12. Section 6 of the Uttar Pradesh District Planning Committee Act, 1999 (hereinafter referred to as 'the Act, 1999') reads as follows:

> **"6. Permanent invitees to the Committee.** -
> (1) Members of the House of the People and members of the Legislative Assembly of the State representing constituencies which are comprised wholly or partly in the district shall be permanent invitees to the meeting of the Committee.
> (2) Members of Legislative Council of the State representing graduate or teachers or local bodies constituencies which are comprised wholly or partly in the district shall also be permanent invitees to the meeting of the Committee.
> (3) Members of the Legislative Council of the State elected by the member of Legislative Assembly of the State or nominated by the Governor shall also be permanent invitees to the meetings of the Committee of a district of their choice.
> (4) Members of Council of States representing the State shall also be permanent invitees to the meetings of the Committee of a district of their choice.
> (5) No permanent invitee shall nominate a person as his representive to attend a meeting of the Committee on his behalf:
> Provided that where a permanent invitee, who is not a member of the Council of Ministers of the Government of India or the Government of Uttar Pradesh, has been required to attend such meeting in two or more district on the same day, he may nominate a person as his representative to attend the meeting of the Committee of a district in which he is not in a position to attend such meeting:
> Provided further that where a permanent invitee, who is a member of the Council of Ministers of the Government of India or the Government of Uttar

> Pradesh, has been required to attend such meeting, he may nominate a person as his representative to attend the meeting of the Committee if he is not in a position to attend such meeting."

13. True, the Second Proviso to Sub-section (5) of the above-quoted Section 6 permits the member of the Council of Ministers to nominate a person as his representative to attend the meeting of the Committee under Uttar Pradesh District Planning Committee Act, 1999.

14. "Committee" referred to in Second Proviso to Sub-section (5) of Section 6 of the Act, 1999 has been defined in clause (b) of Section 2 of the Act, which reads as follows:

> "(b) "Committee" means the District Planning Committee constituted under Section 3."

15. From the above discussion, it becomes clear that a member of the Council of the Ministers can nominate a person as his representative to attend the meeting of the District Planning Committee on his behalf. The learned Addl. Chief Standing Counsel could not point out any similar provision in the Adhiniyam, 1961. The absence of a similar provision in the Adhiniyam, 1961 would necessarily mean that a representative / nominee of a minister is not entitled to attend the meetings of the Zila Panchayat and the other committees of the Zila Panchayat constituted under the Adhiniyam, 1961.

16. The inevitable conclusion of the above discussion is that in view of the Government Order dated 10.03.1998, no relative of a women member or office bearer, which would include the Chairman of the Zila Panchayat also, can attend or participate in the meetings of the Zila Panchayat.

17. We, therefore, direct that in the meetings of Zila Panchayat to be held in future, no relative (not even the husband) of the women member or Chairman of the Zila Panchayat shall be permitted to attend or participate in the meeting not even in the capacity of a nominee or the representative of an ex-officio member, be it a Council of Ministers, a Member of Parliament or a Member of Legislative Assembly.

18. The authorities concerned are further directed to carry out the above directions in letter and spirit.

19. With the above directions, the writ petition stands disposed of.

20. With the above order, CLMA No. 7079 of 2004 also stands disposed of.

(Prafulla C. Pant, J.) 20.07.2006

(Rajeev Gupta, C. J.) 20.07.2006

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